

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAM MARTINEZ and U.S. POSTAL SERVICE,
POST OFFICE, McAllester, OK

*Docket No. 01-732; Submitted on the Record;
Issued November 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent permanent impairment of the right upper extremity.

On May 3, 1999 appellant, then a 47-year-old carrier, injured his right shoulder when he lifted a tray of heavy parcels. The Office of Workers' Compensation Programs accepted the claim for a right shoulder impingement and right rotator cuff tear and authorized surgery to repair the injury. Appellant did not stop work.

Thereafter, appellant submitted treatment notes from Dr. Ronald C. Schatzman, a Board-certified orthopedic surgeon, dated July 22, 1999 and April 26, 2000; a magnetic resonance imaging (MRI) scan dated August 17, 1999; several attending physician reports from Dr. Schatzman dated October 14, 1999 to April 26, 2000; and a limited-duty job offer dated November 5, 1999. Dr. Schatzman's note dated July 22, 1999 indicated appellant's condition was improving and that he continued to work. His April 26, 2000 treatment note indicated a history of appellant's injury and noted appellant was post status right shoulder repair for the impingement syndrome. Dr. Schatzman indicated appellant did not have full range of motion of his right shoulder at this time; however, he was able to do his normal work. The MRI scan revealed a rotator cuff tear with an associated joint effusion and bona bruise. The attending physician reports from Dr. Schatzman indicated a history of appellant's injury. Dr. Schatzman diagnosed appellant with a rotator cuff tear and shoulder impingement syndrome. He noted that the condition was found to have been caused or aggravated by the employment activity. The limited-duty job offer indicated appellant accepted a limited-duty job which complied with appellant's employment restrictions as set forth by his doctor.

On June 14, 2000 appellant filed a claim for a schedule award. He submitted a June 5, 2000 medical report from Dr. Schatzman, who evaluated appellant for permanent impairment arising from his accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993). Dr. Schatzman determined appellant sustained an 11 percent impairment of the right upper

extremity: 2 percent rating for loss of abduction for the right shoulder; 2 percent rating for loss of flexion for the right shoulder; he noted external rotation of 75 degrees; and internal rotation of 80 degrees; for a total combined impairment of right upper extremity of 11 percent.¹

Dr. Schatzman's report and the case record were referred to the Office's medical adviser who determined that appellant sustained a three percent impairment of the right upper extremity.

In a decision dated November 29, 2000, the Office granted appellant a schedule award for a three percent loss of use of the right upper extremity.

The Board finds that appellant has no more than a three percent impairment of the right upper extremity.

The schedule award provision of the Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

On appeal appellant alleges that he is entitled to schedule award for 11 percent in compliance with the impairment rating determined by his treating physician Dr. Schatzman.

In a report dated June 5, 2000, Dr. Schatzman estimated that appellant sustained an 11 percent impairment which comprised of a 2 percent rating for loss of abduction for the right shoulder and a 2 percent rating for loss of flexion for the right shoulder; he noted external rotation of 75 degrees; and internal rotation of 80 degrees for a total impairment of the right upper extremity of 11 percent. However, he improperly calculated the rating of loss range of motion for the right shoulder at 11 percent impairment. The A.M.A., *Guides* provide that the rating of loss of external rotation of 75 degrees of the right shoulder to be rated at zero⁴; the rating for loss of abduction of 135 degrees to be rated at 2 percent⁵; the rating for loss of internal rotation of 80 degrees to be rated at 0 percent⁶; and the rating for loss of flexion of 170 to be rated at 1 percent.⁷ The A.M.A., *Guides* provide that to determine upper extremity impairment

¹ The doctor obtained his rating from Figure 44, page 45 of the A.M.A., *Guides*.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ See page 45, Figure 44 of the A.M.A., *Guides*.

⁵ See page 44, Figure 41 of the A.M.A., *Guides*.

⁶ *Supra* note 4.

⁷ See page 43, Figure 38 of the A.M.A., *Guides*.

you must add the impairment percent for loss of flexion and extension of the shoulder;⁸ loss of abduction and adduction of the shoulder;⁹ and loss of internal and external rotation of the shoulder to find the value for upper extremity impairment.¹⁰ In this case, Dr. Schatzman incorrectly determined appellant's right upper extremity impairment to be 11 percent.¹¹

The medical adviser utilized the findings in Dr. Schatzman's report to determine appellant's loss of range of motion for the right shoulder. The medical adviser noted Dr. Schatzman's report indicated 170 degrees at flexion which is a 1 percent impairment¹²; 135 degrees at abduction which is a 2 percent impairment.¹³ The figures Dr. Schatzman provided for external rotation and internal rotation were not ratable¹⁴ thereby appellant's impairment for loss of range of motion of the right shoulder totaled three percent. The one percent impairment for loss of flexion with the two percent for loss of abduction yields a three percent impairment.

The Board finds that Dr. Schatzman did not properly follow the procedures as set forth in the A.M.A., *Guides*.¹⁵ The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Schatzman's report and reached an impairment rating of three percent. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a three percent permanent impairment of the right upper extremity.

⁸ *Id.*

⁹ *Supra* note 5.

¹⁰ *Supra* note 4.

¹¹ *See* page 43, Figure 38 and 39 of the A.M.A., *Guides*.

¹² *Supra* note 7.

¹³ *Supra* note 5.

¹⁴ *See* page 44, Figure 41 and page 45, Figure 44 of the A.M.A., *Guides*.

¹⁵ *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed); *John Constantine*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

The decision of the Office of Workers' Compensation Programs dated November 29, 2000 is hereby affirmed.

Dated, Washington, DC
November 20, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member